

HR Weekly Podcast

04/02/08

Today is April 02, 2008, and welcome to the HR Weekly Podcast from the State Office of Human Resources. This week's topic concerns the stereotyping of caregivers in the workplace.

A study conducted at the Hastings College of Law at the University of California revealed the number of caregiver discrimination cases increased 400% in the last decade. Conflicts between work and family responsibilities continue to rise as the "sandwich generation" of baby boomers are taking care of their parents or disabled family members in addition to their own children. Even though this may be the situation faced by many in the workplace, treating employees with caregiving responsibilities differently may lead to disparate treatment.

The federal Equal Employment Opportunity Commission, or EEOC, has addressed this matter by issuing new enforcement guidance on Unlawful Disparate Treatment of Workers with Caregiving Responsibilities. It is designed to assist employers and employees in determining if discrimination against those with caregiving responsibilities constitutes unlawful disparate treatment under federal law.

While caregivers are not specifically considered a protected class under federal statute, other laws, such as the Family and Medical Leave Act, may cover caregivers. Employers should still use caution when treating employees with caregiving responsibilities differently from employees without caregiving responsibilities. In accordance with Title VII of the Civil Rights Act of 1964, discrimination claims must be based on a protected characteristic, such as gender or race, and not on caregiver status. An employer offering time-off to a female employee with a newborn, but not to a male employee with a newborn, may be viewed as exhibiting disparate treatment.

Stereotypes centered on the notion that taking care of another person will interfere with job performance can also lead to disparate treatment claims. It is not necessarily true that an employee's performance will suffer as a direct result of that employee's caregiving responsibilities. An employer may believe it is being benevolent by limiting a pregnant mother's travel related work assignments, but it may be considered disparate treatment. The EEOC provides the following examples of other situations that may be considered unlawful disparate treatment:

- Treating male caregivers more favorably than female caregivers
- Reassigning a female employee to less desirable projects, assuming as a new mother she will be less committed to her job
- Subjective decision-making
- Assumptions about pregnant workers
- Discrimination against working fathers
- Discrimination against women of color who are caregivers
- Stereotyping based on association with an individual with a disability
- Subjecting an employee to hostile work environment because he or she became a parent or caregiver to someone with a disability

As the workforce continues to change demographically, HR must also adapt to the changing dynamics. HR professionals should consider reviewing policies, or creating new ones, that are gender neutral. Training is also a good tool to prevent disparate treatment and other discrimination claims. Managers and supervisors should also be aware of federal laws and use caution when discussing

personal or family issues with employees. Finally, basing employment decisions on performance and objective criteria is another way to avoid discrimination claims.

If you have any questions or concerns about caregivers or the EEOC Enforcement Guidance, please visit www.eeoc.gov or call your HR Consultant at 737-0900.

Thank you.